

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH VICTOR LAGANA,

Plaintiff,

v.

SAN FRANCISCO POLICE DEPARTMENT,

Defendant.

No. C 08-3392 CW

ORDER GRANTING
PLAINTIFF'S
MOTION FOR AN
EXTENSION OF
TIME, GRANTING
DEFENDANT'S
MOTION TO DISMISS
AND GRANTING
PLAINTIFF LEAVE
TO AMEND

On July 21, 2008, Defendant City and County of San Francisco¹ filed a motion to dismiss for failure to state a claim, or, in the alternative, for a more definite statement. On July 30, 2008, the Court entered an order taking the motion under submission on the

¹Defendant City and County of San Francisco states that it was erroneously named as San Francisco Police Department in the original complaint. In the amended complaint, Plaintiff names the San Francisco Police Department and the City and County of San Francisco as Defendants. The police department is an agency of the City and County. The City and County of San Francisco is the entity that may be sued.

1 papers. The Court instructed pro se Plaintiff Joseph Lagana that
2 his opposition to the motion would be due August 7, 2008.
3 Plaintiff was warned that failure timely to file an opposition
4 would result in dismissal of the case for failure to prosecute. On
5 August 14, 2008, Plaintiff filed a motion for an extension of time
6 to respond to Defendant's motion to dismiss, an opposition to
7 Defendant's motion to dismiss and an amended complaint.

8 I. Motion for an extension of time

9 Plaintiff states, "I was under the impression that I had E-
10 file abilities and have been waiting for my account to be
11 approved." Docket No. 9. Upon discovering that, as a pro se
12 litigant, he would need an order from the Court permitting him to
13 participate in the Electronic Case Filing (ECF) program, Plaintiff
14 mailed to the Court his motion for an extension of time and
15 opposition to the motion to dismiss. In the interest of justice,
16 the Court grants Plaintiff's motion for an extension of time.

17 II. Motion to dismiss

18 Although Plaintiff has filed an amended complaint, the
19 amendments do not cure all of the deficiencies identified in the
20 earlier motion to dismiss. Therefore, the Court grants the motion
21 to dismiss but grants Plaintiff leave to amend his complaint
22 consistent with the Court's order.

23 A. Factual basis for claims

24 It appears that Plaintiff's claims are based on four
25 instances in which he was arrested by San Francisco police officers
26
27
28

1 and one incident that occurred in front of "Ross Stores."²

2 Although Plaintiff provides the date for the Ross Store incident
3 and one of the arrests, it is not clear from the complaint when the
4 other three arrests occurred. Plaintiff also includes a general
5 allegation that he has been "frequently threatened, harassed, and
6 stalked by unknown S.F.P.D. officers." Amended Complaint at 2.

7 Plaintiff must amend his complaint to include more information
8 about the incidents upon which his claims are based. Specifically,
9 Plaintiff must include the date of each incident and the names of
10 the officers involved in each incident. To the extent Plaintiff
11 does not know the names of the officers involved, he may include
12 allegations against "unknown officers."

13 Plaintiff also includes allegations that unnamed individuals
14 made "false police reports" about him. Plaintiff fails to include
15 dates or other identifying details about such reports.

16 B. Defendants

17 As noted above, Plaintiff has named the San Francisco Police
18 Department and the City and County of San Francisco as Defendants.
19 Although Plaintiff identifies several officers by name, he does not
20 include them as defendants. Plaintiff may bring his claims against
21 the City. However, he is advised that to sue the City on any 42
22 U.S.C. § 1983 claim, he must allege that the violation of his
23 rights was pursuant to a custom or policy of the City, or allege

24
25 ²The Court notes that Plaintiff includes a "General Factual
26 Background" heading, but does not include any such background
27 before stating his causes of action. For purposes of clarity,
28 Plaintiff must include a separate section discussing the factual
bases for his claims.

1 facts from which such a custom or policy can be inferred. Shaw v.
2 Cal. Dep't of Alcoholic Beverage Control, 788 F.2d 600, 610-11 (9th
3 Cir. 1986). The City cannot be liable for a constitutional injury
4 caused solely by the independent actions of a deputy acting in his
5 official capacity. Lewis v. Sacramento County, 98 F.3d 434, 446
6 (9th Cir. 1996) (overruled on other grounds in County of Sacramento
7 v. Lewis, 523 U.S. 833, 838 & n.2 (1998)). Applying the standard
8 for municipal liability from Monell v. New York City Dept. of
9 Social Servs., 436 U.S. 658, 694-695 (1978), the Ninth Circuit
10 stated:

11 A municipality may be liable for actions resulting in
12 violations of constitutional rights only when the conduct
13 of its official or agent is executed pursuant to a
14 government policy or custom. To establish municipal
15 liability under § 1983, a plaintiff must show that (1) he
16 was deprived of a constitutional right; (2) the
17 municipality has a policy; (3) the policy amounts to
18 deliberate indifference to plaintiff's constitutional
19 rights; and (4) the policy is the moving force behind the
20 constitutional violation. The Supreme Court has
21 emphasized that the unconstitutional acts of a government
22 agent cannot, standing alone, lead to municipal
23 liability; there is no respondeat superior liability
24 under § 1983. A municipality may only be liable where
25 its policies are the "'moving force [behind] the
26 constitutional violation.'"

19 Lewis, 98 F.3d at 446.

20 If Plaintiff wishes to sue for damages for civil rights
21 violations based on individual officers' actions and decisions he
22 must name those individuals as defendants. As stated above, to the
23 extent that Plaintiff cannot without discovery name individual
24 officers, he may name "unknown officers" as defendants. After he
25 has undertaken discovery to learn their names, he may move for
26 leave to file an amended complaint to name them.
27
28

1 C. Causes of action

2 In his amended complaint, Plaintiff identifies three causes of
3 action: intentional tort, fraud and general negligence. Within the
4 section titled intentional tort, Plaintiff cites 42 U.S.C. § 1983.

5 1. Intentional tort

6 a. Section 1983

7 To the extent that Plaintiff seeks to bring claims pursuant to
8 42 U.S.C. § 1983, he must identify the specific event or events
9 upon which each claim is based. In addition, he must identify
10 which constitutional right he alleges has been violated. As stated
11 above, if Plaintiff seeks to bring § 1983 claims against the City
12 and County of San Francisco, he must allege facts concerning any
13 policy he believes was the moving force behind the alleged
14 constitutional violation.

15 b. Other torts

16 If Plaintiff intends to bring state law claims aside from his
17 § 1983 claims under the heading "intentional tort," he must
18 identify which torts he believes were committed, who committed
19 those torts and the events upon which he bases such claims. In
20 addition, if Plaintiff alleges any such state law tort claims, he
21 must allege facts demonstrating that he has complied with the
22 California Tort Claims Act. In particular, Plaintiff must allege
23 facts sufficient to establish that, as required by California
24 Government Code § 954.4, he has timely presented each claim to the
25 City and County of San Francisco. It would be helpful to attach
26 copies of the claims and the responses to them.

2. Fraud

Plaintiff's fraud claim fails as a matter of law. Plaintiff alleges that an unidentified defendant filed multiple police reports falsely asserting that Plaintiff committed various crimes. Plaintiff further alleges that these police reports "induce[d] plaintiff to act as described" and Plaintiff "acted in justifiable reliance upon the promise." Amended Complaint at 3. It is not clear what actions Plaintiff contends he took as a result of the allegedly false police reports. However, it does not make sense that Plaintiff could justifiably rely on the alleged fraud--the false reports--because he necessarily knew that those reports were false when made. Because amendment of this claim would be futile, the Court dismisses Plaintiff's fraud claim with prejudice.

3. General negligence

Plaintiff's final claim for "general negligence" appears to be based on three events. First, Plaintiff alleges that the "S.F.P.D. neglected to arrest the 'Ross Stores' manager/employee that assaulted the plaintiff with a lit cigarette butt directly in-front of an S.F.P.D. officer." Amended Complaint at 5. In support of his tort claim against the Police Department, Plaintiff cites California Penal Code § 142, which provides penalties for an officer who refuses to arrest an individual charged with a criminal offense. Plaintiff provides no evidence that the "manager/employee" was charged with any offense. In addition, this statute does not appear to provide a basis for Plaintiff's tort claim against the Police Department. Nor does Plaintiff claim any damages that he suffered because of the alleged negligent failure

1 to arrest. Because amendment of this claim would be futile, it is
2 dismissed without leave to amend.

3 Next, Plaintiff alleges, "On the third occasion plaintiff was
4 arrested by the defendant S.F.P.D., his property was left in the
5 streets and not retrieved by the S.F.P.D. whom [sic] neglected his
6 property to be looted by locals." If Plaintiff wishes to pursue
7 this claim, he must allege facts sufficient to identify the time
8 and place of the arrest upon which the claim is based and, as
9 discussed above, facts sufficient to support a finding that he
10 timely presented a claim as required by California Government Code
11 § 954.4.

12 Finally, Plaintiff alleges that, on July 17, 2008, an officer
13 he identifies as "L. Bertrand" detained Plaintiff "for almost 30
14 minutes for protesting about the S.F.P.D. . . . and searched and
15 seized the plaintiff's property without the plaintiff's consent."
16 Complaint at 5. Plaintiff asserts that Bertrand's actions
17 constitute a Fourth Amendment violation. An allegation of a
18 federal constitutional violation such as this must be brought as a
19 § 1983 claim.³ If Plaintiff intends to pursue a claim against the
20 City and County of San Francisco based on this search and seizure,
21 he must allege facts sufficient to support a finding that a
22 Department or City policy was the moving force behind the alleged
23 constitutional violation. If Plaintiff intends to pursue this
24 claim against Bertrand as an individual, he must name him as a
25 _____

26 ³Plaintiff cannot bring a state law claim based on this
27 detention unless and until he has timely filed a claim with the
28 City and County of San Francisco and that claim has been denied.

1 defendant.

2 In addition to these three specific allegations, Plaintiff
3 asserts that the "S.F.P.D. neglected to respect the plaintiff's
4 constitutional rights on multiple occasions." Complaint at 5.
5 This is not sufficient to state a claim. If Plaintiff has other
6 constitutional claims, he must identify the events upon which the
7 claims are based as well as the specific constitutional violations
8 he alleges occurred.

9 CONCLUSION

10 For the foregoing reasons, the Court GRANTS Plaintiff's motion
11 for an extension of time (Docket No. 9), GRANTS Defendants' motion
12 to dismiss (Docket No, 4) and grants Plaintiff leave to amend. If
13 Plaintiff intends to pursue these claims, he may file, within three
14 weeks of the date of this order, an amended complaint consistent
15 with the Court's order. Thereafter, Defendants will have two weeks
16 to file a further motion to dismiss or to answer the amended
17 complaint. If Plaintiff does not timely file an amended complaint,
18 the case will be dismissed with prejudice for failure to prosecute.

19 IT IS SO ORDERED

20
21 Dated: 8/27/08



22 CLAUDIA WILKEN
23 United States District Judge
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH,

Plaintiff,

v.

LAGANA-V-SAN FRANCISCO POLICE DEPT
et al,

Defendant.

Case Number: CV08-03392 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 27, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Meghan Kathleen Higgins
Andrew Martin Gschwind
San Francisco City Attorney's Office
1390 Market Street, 6th Floor
San Francisco, CA 94102

Joseph Victor Lagana
5238 Cartwright Avenue #8
N. Hollywood, CA 91601

Dated: August 27, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California